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Date of Decision: 7th October 1995

SPECIAL CIVIL APPLICATION NO. 4591 of 1988

FOR APPROVAL AND SIGNATURE

THE HONOURABLE MR. JUSTICE A.N. DIVECHA

1. Whether Reporters of Local Papers may be allowed to see the judgment? Yes
2. To be referred to the Reporter or not? No
3. Whether their Lordships wish to see the fair copy of judgment? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder? No
5. Whether it is to be circulated to the Civil Judge? No

Shri Mehul S. Shah, Advocate, for the Petitioners

Shri Y.M. Thakkar, Asst. Govt. Pleader, for the Respondents

CORAM: A.N. DIVECHA, J.
(Date: 7th October 1995)

ORAL JUDGMENT

The order passed by the Competent Authority at Rajkot (respondent No.1 herein) on 31st August 1987 under sec. 8(4) of the Urban Land (Ceiling and Regulation) Act, 1976 (the Act for brief) as affirmed in appeal by the Urban Land Tribunal at Ahmedabad (respondent No. 2 herein) by the order passed on 3rd November 1987 in Appeal No. Rajkot-171 of 1987 is under challenge in this petition under Art. 226 of the Constitution

of India. By his impugned order, respondent No.1 declared the holding of the petitioners to be in excess of the ceiling limit by 4413.10 square meters.

2. The facts giving rise to this petition move in a narrow compass. Petitioners Nos. 1 and 2 filed their declarations in the prescribed form under sec. 6(1) of the Act with respect to their holding within the urban agglomeration of Rajkot. That form was duly processed earlier by respondent No. 1 by his order passed on 31st January 1983. Its copy is at Annexure B to this petition. That was carried in appeal and it was numbered as Appeal No. Rajkot-65 of 1983. The appeal was disposed of by the order passed on 29th January 1987 and the matter was remanded to respondent No.1 for his fresh decision according to law. A copy of the appellate order is at Annexure D to this petition. Thereafter by his order passed on 31st August 1987 under sec. 8(4) of the Act, respondent No.1 declared the holding of petitioners Nos. 1 and 2 to be in excess of the ceiling limit by 4413.10 square meters. Its copy is at Annexure E to this petition. That aggrieved the petitioners. They carried the matter in appeal before respondent No.2 under sec. 33 of the Act. It came to be registered as Appeal No. Rajkot-171 of 1987. By his order passed on 14th March 1988 in the aforesaid appeal, respondent No.2 dismissed it. Its copy is at Annexure F to this petition. The aggrieved petitioners have thereupon approached this court by means of this petition under Art. 226 of the Constitution of India for questioning the correctness of the order at Annexure E to this petition as affirmed in appeal by the appellate order at Annexure F to this petition.

3. It transpires from the impugned orders that petitioners Nos. 1 and 2 sold practically their entire holding to one Dena Friends Society by executing five sale deeds between 1st March 1974 and 4th June 1974. It transpires from the appellate order at Annexure D to this petition that all these documents were submitted for registration in 1974. In fact, in the order at Annexure E to this petition the numbers by which the sale deeds were taken for registration have also been mentioned. It thus becomes clear that the sale deeds were executed between 1st March 1974 and 4th June 1974. Their registration was however effected as late as on 31st March 1978. On account of such belated registration of the sale deeds, respondent No.1 came to the conclusion that sale transactions were not bona fide for the purpose of sec. 4(4) of the Act and the lands represented by such sale transactions will have to be included in the holding of petitioners Nos. 1 and 2. This view has been affirmed by respondent No.2 in appeal as transpiring from the appellate order at Annexure F to this petition.

4. In this connection, a reference deserves to be made to

sec. 7 of the Registration Act, 1908. It has been provided therein that the effect of registration would be operation of the document from the date of its execution and not from the date of its registration. Both the authorities below have remained oblivious to this provision of law. Had they considered this aspect of the aforesaid statutory provision, they would have immediately realised that the sale transactions had taken place even before the specified period contained in sec. 4(4) of the Act. In that case, both the authorities would have realised that it was not necessary for petitioners Nos. 1 and 2 to include the lands represented by the aforesaid sale transactions in the declaration in the prescribed form under sec. 6(1) of the Act.

5. Under the impugned orders the excess land held by petitioners Nos. 1 and 2 beyond the ceiling limit is found to be to the tune of 4413.10 square meters. The area represented by the aforesaid sale transactions is shown to be 5492.82 square meters together with the common plot to the tune of 420.28 square meters. In that view of the matter, the holding of petitioners nos. 1 and 2 could not be said to be in excess of the ceiling limit on the date the Act came into force.

6. In view of my aforesaid discussion, I am of the opinion that the impugned order at Annexure E to this petition as affirmed in appeal by the appellate order at Annexure F to this petition cannot be sustained in law. It has to be quashed and set aside.

7. In the result, this petition is accepted. The order passed by the Competent Authority at Rajkot on 31st August 1987 at Annexure E to this petition as affirmed in appeal by the order passed by the Urban Land Tribunal at Ahmedabad on 14th March 1988 in Appeal No. Rajkot-171 of 1987 at Annexure F to this petition is quashed and set aside. Rule is accordingly made absolute with no order as to costs.
